INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statutes involved	2
Statement	2
Specification of errors to be urged	5
Argument	5
Conclusion	6

CITATIONS

Cases:

Anderson v. *Wilson*, 289 U.S. 20	5
Helvering v. *Falk*, No. 225, October Term, 1933	5

In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 227

MARSHALL S. REYNOLDS, INDIVIDUALLY AND AS COLLECTOR of Internal Revenue, petitioner

v.

RICHARD F. COOPER

No. 228

MARSHALL S. REYNOLDS, INDIVIDUALLY AND AS COLLECTOR of Internal Revenue, petitioner

v.

BARBARA V. COOPER

No. 229

MARSHALL S. REYNOLDS, INDIVIDUALLY AND AS COLLECTOR of Internal Revenue, petitioner

v.

RICHARD F. COOPER AND BARBARA V. COOPER

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the District Court for the District of Wyoming (R. 24–29) is reported in 60 F. (2d) 650.

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The opinion of the Circuit Court of Appeals (R. 66–71) is reported in 64 F. (2d) 644.

JURISDICTION

The judgments of the Circuit Court of Appeals were entered April 3, 1933. (R. 71.) The petition for writs of certiorari was filed July 1, 1933, and was granted October 9, 1933. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether beneficiaries of a trust receiving distributions of income are entitled to deductions for depletion of the mineral property constituting a part of the corpus of the trust.

STATUTES INVOLVED

The statutes involved are set forth in the appendix to the Government's brief in *Helvering* v. *Falk*, No. 225, October Term, 1933.

STATEMENT

These three cases were tried together by the District Court without a jury pursuant to a stipulation. (R. 23–24.)[1] The facts as stipulated are in substance as follows:

The respondents are the beneficiaries of a trust created by the will of their father, A. F. T. Cooper, who died December 8, 1918. (R. 37.) Under this will, together with a codicil, the residuary estate was left to trustees. The trustees were directed by clause 14 of the will (R. 44–45) as amended by clause 2 of

[1] All references will be made to the record in the *Richard F. Cooper* case.

the codicil (R. 49) to convert the property into money at such time and in such manner as they should think fit, with full power to postpone the sale and to manage the property in the meantime. After the payment of £1,000 pounds, as directed by the will, as amended by the codicil, the trustees were to pay one half of the balance of the residue to Richard Francis Cooper absolutely, one fourth to John Hartshorn Cooper absolutely, and one fourth to Barbara Violet Cooper. (R. 44–45, 49.)

Part of the residuary estate consisted of certain oil and gas land in Wyoming, which the testator had leased to the Ohio Oil Company on October 9, 1917, for a period of twenty years, with the privilege of an extension for a further period of twenty years. The lease provided for royalty payments to the lessor, beginning at 12½% in 1917 and increasing to 20% in 1927 and thereafter (R. 37, 50–55).

The codicil contained the following provisions relative to distributions by the trustees (R. 48–49):

> 1. I hereby declare that my trustees shall have full power of postponing for any length of time as in their uncontrolled discretion they may think fit the realization of the oil rights under my ranch in Wyoming U.S.A., without being liable for any loss arising therefrom and of deciding what proportion of the annual receipts therefrom shall be treated as capital and what proportion as income and their decision shall be considered for all purposes as final.

Prior to 1923, the trustees had paid the testator's debts and the legacies provided by the will, and had carried out the direction with respect to the first 21,000 pounds of the residue, so that during 1923 and the subsequent years here involved the ultimate residuary clause of the will and codicil was operative. Prior to September 13, 1923, Richard F. Cooper received one-half of the distributions made by the trustees, the estate of John H. Cooper received one-fourth, and Barbara V. Cooper received one-fourth. Of distributions made after September 23, 1923, through 1927, Richard F. Cooper received one-half, plus one-eighth (as devisee under the will of John H. Cooper), and Barbara V. Cooper received the remaining three-eighths. (R. 37–38.)

In their information returns of trust income for 1923 to 1927, inclusive, the trustees claimed deductions for depletion and the beneficiaries in reporting their distributive shares of the trust income in their individual returns took this depletion into account.[2] (R. 38–39.)

The Commissioner of Internal Revenue determined that the beneficiaries were not entitled to have their distributive shares of income reduced by a deduction for depletion and determined deficiencies accordingly. (R. 39.) After payment of the taxes thus found due, claims for refund were filed, and more than six months thereafter these suits to recover the additional taxes were commenced by the beneficiaries. The District

[2] The amount of depletion allowable, if any is allowable, is not in dispute. (R. 39.)

Court gave judgment for the plaintiffs and the Circuit Court of Appeals affirmed this decision.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the respondents were entitled to a deduction for depletion of the corpus of the trust from which they received distributions of income.

2. In failing to hold that there is no statutory authority in the Revenue Acts of 1921, 1924, and 1926 for the allowance of a deduction for depletion from trust income received by beneficiaries of a trust.

ARGUMENT

These cases present the question whether beneficiaries of a trust receiving distributions of trust income are entitled, under the Revenue Acts of 1921, 1924 and 1926, to deductions for depletion of the property owned by the trust. The question is identical with that raised in *Helvering* v. *Falk*, No. 225, October Term, 1933, and the argument made in the Government's brief in that case is likewise applicable here.

The only difference in the facts is that in the *Falk* case property remaining in the trust at its termination reverted to the settlor, whereas in the instant cases the trustees were obliged to convert the estate into cash and to distribute the proceeds to the beneficiaries receiving the income. But the very fact of conversion prevents the beneficiaries from having an interest in the real estate held in trust. *Anderson* v. *Wilson*, 289 U.S. 20. There is therefore substantially no differ-

ence between the position of the beneficiaries in this case and in the *Falk* case.

CONCLUSION

The decision of the Circuit Court of Appeals should be reversed.

Respectfully submitted.

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